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**IN THE  
COURT OF APPEALS OF INDIANA**

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ROBERT EVAN WRIGHT,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 79A02-0611-CR-1006

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APPEAL FROM THE TIPPECANOE CIRCUIT COURT  
The Honorable Donald L. Daniel, Judge  
Cause No. 79C01-0510-FC-45

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**May 31, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**CRONE, Judge**

## **Case Summary**

Robert Evan Wright appeals his twelve-year sentence for two counts of class C felony forgery. We affirm.

## **Issues**

Wright raises two issues, which we restate as follows:

- I. Whether the trial court abused its discretion in its finding and balancing of aggravating and mitigating circumstances; and
- II. Whether Wright's sentence is inappropriate in light of the nature of his offenses and his character.

## **Facts and Procedural History**

On September 9, 2005, Wright took a blank check from a married couple's checkbook without their knowledge and made it payable to himself in the amount of \$3,000.00. He then endorsed the check and cashed it at a Bank One branch in Lafayette. On September 14, 2005, Wright took another blank check from the same couple's checkbook and made it payable to himself in the amount of \$5,000.00. Again, he endorsed the check and cashed it at the same Bank One location. Wright apparently used the money to purchase drugs.<sup>1</sup> On October 3, 2005, the State charged Wright with two counts of class C felony forgery, two counts of class C felony fraud on a financial institution, and four counts of class D felony theft. On May 19, 2006, five days before his scheduled trial date, Wright pled guilty to two counts of class C felony forgery, and the State dismissed the remaining charges in this case as

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<sup>1</sup> During his statement at sentencing, Wright told the trial court, "...[M]y drug habit just continued to get worse and worse to the point where obviously not caring [sic] about how I got the drugs or the money to obtain them which is sad." Tr. at 20.

well as two pending charges in another case.<sup>2</sup> On June 9, 2006, the trial court sentenced him to six years for each count, with the terms to be served consecutively. On July 31, 2006, Wright filed a pro se motion for appeal. The trial court denied the motion as untimely filed. At Wright's request, the trial court appointed counsel for Wright. On October 30, 2006, he filed a motion for permission to file a belated notice of appeal, which was granted on October 31, 2006. This appeal ensued.

## **Discussion and Decision**

### ***I. Aggravating and Mitigating Circumstances***

Wright alleges that the trial court abused its discretion in its finding and balancing of aggravating and mitigating circumstances. Several months prior to Wright's offenses, our legislature amended Indiana's sentencing scheme. The changes were effective April 25, 2005. As amended, Indiana Code Section 35-50-2-6 states in relevant part: "A person who commits a Class C felony shall be imprisoned for a fixed term of between two (2) and eight (8) years, with the advisory sentence being four (4) years." Indiana Code Section 35-38-1-3 provides that if a trial court finds aggravators and/or mitigators at sentencing, then it must make a statement of its "reasons for selecting the sentence it imposes." However, a trial court may impose any sentence authorized by statute or permissible under the Indiana Constitution "regardless of the presence or absence of aggravating circumstances or mitigating circumstances." Ind. Code § 35-38-1-7.1(d). Our supreme court has not yet provided guidance as to the proper role of aggravators and mitigators in the current

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<sup>2</sup> The plea agreement states in relevant part, "Cause No. 79D04-0506-CM-224 (Possession of Marijuana and Operating While Suspended) shall be dismissed at the time of sentencing." Appellant's App.

sentencing scheme; however, the plain language of Indiana Code Section 35-38-1-7.1(d) seems to indicate that ““a sentencing court is under no obligation to find, consider, or weigh either aggravating or mitigating circumstances[,]” so long as the sentence is within the applicable statutory range. *Primmer v. State*, 857 N.E.2d 11, 17 (Ind. Ct. App. 2006) (quoting *Fuller v. State*, 852 N.E.2d 22, 26 (Ind. Ct. App. 2006), *trans. denied*).

Wright applies arguments relating to our prior sentencing scheme, in which the statutes mandated presumptive, rather than advisory, sentences, which trial court increased or decreased based on the finding and balancing of aggravating and mitigating circumstances. For example, he states, “the presumptive sentence is the starting point the Legislature has selected as an appropriate sentence for the crime committed.” Appellant’s Br. at 8 (citing *Ruiz v. State*, 818 N.E.2d 927, 929 (Ind. 2004), and *Lander v. State*, 762 N.E.2d 1208, 1214-15 (Ind. 2002)). However, the current sentencing statutes say otherwise. Indiana Code Section 35-50-2-1.3(a) states that for purposes of felony sentencing, “‘advisory sentence’ means a guideline sentence that the court may *voluntarily* consider as the midpoint between the maximum sentence and the minimum sentence.” (Emphasis added.) At sentencing, the court stated the aggravators and mitigators that influenced its decision and imposed a sentence within the applicable statutory range. In our view, it fulfilled current sentencing requirements and acted within its discretion.

Without guidance from our supreme court, however, we will assume for purposes of this decision that we still must assess the trial court’s finding and balancing of aggravators and mitigators. The trial court found one mitigator—that Wright “took responsibility for his

actions” by pleading guilty. Tr. at 21. As for aggravators, the trial court noted Wright’s significant criminal history, his history of drug and alcohol use, his prior opportunities for rehabilitation, his “very high” Level of Service Inventory score (indicating an 88.6% risk that he will re-offend within one year if services are not offered), and the fact that he violated probation orders in two different cases when he committed the crimes in the instant case. *Id.* at 22.

Wright contends that he did not receive a benefit from his guilty plea because the trial court “failed to give that factor significant weight.” Appellant’s Br. at 9. We note, however, that in exchange for Wright’s guilty plea, the State dismissed six felony charges in this case and two pending charges in another case. Therefore, if in fact the trial court did not assign significant weight to Wright’s plea, it was well within its discretion. *See Wells v. State*, 836 N.E.2d 475, 479 (Ind. Ct. App. 2005) (“[A] guilty plea does not rise to the level of significant mitigation where the defendant has received a substantial benefit from the plea or where the evidence against him is such that the decision to plead guilty is merely a pragmatic one.”).

Wright also claims that the trial court abused its discretion in failing to find several other mitigators, including his remorse, the non-violent nature of his crimes, his unsuccessful attempts to get treatment for his drug and alcohol addictions, and the support of his girlfriend. The trial court is not required to find mitigating factors or to accept as mitigating the circumstances proffered by the defendant. *Dylak v. State*, 850 N.E.2d 401, 410 (Ind. Ct. App. 2006), *trans. denied*. Furthermore, the trial court is not obligated to explain why it did not find a factor to be significantly mitigating. *Id.* To prove an abuse of discretion, Wright must show that the mitigating evidence is both significant and clearly supported by the

record. *See id.*

First, as for Wright's expression of remorse at the sentencing hearing, the trial court was within its discretion not to consider it as a mitigator. Remorse, or lack thereof, is often something that is better gauged by a trial judge who views and hears a defendant's apology and demeanor firsthand and determines the defendant's credibility. *Pickens v. State*, 767 N.E.2d 530, 535 (Ind. 2002). Based upon the record, we cannot say that the trial court abused its discretion in not finding Wright's expression of remorse to be a significant mitigating factor. Second, the fact that Wright's crimes were non-violent is insignificant. Forgery, by its very nature, is not a violent crime, and the legislature presumably took that fact into account when determining the appropriate sentencing range. Third, Wright's claim that he had sought treatment for his addictions in the past is not necessarily significant, given the lack of evidence to support his claim as well as his admission that he was ineligible to participate in at least one program because of his criminal history. Finally, the fact that Wright has a girlfriend is simply not a significant mitigator. In sum, the trial court was well within its discretion in assigning mitigating weight to Wright's guilty plea and choosing not to find any other mitigators.

With regard to aggravators, Wright contends that the trial court gave too much weight to his prior criminal history. We agree with Wright's statement that the significance of a defendant's criminal history "varies based on the gravity, nature and number of prior offenses as they relate to the current offense." *Cotto v. State*, 829 N.E.2d 520, 526 (Ind. 2005). All but one of Wright's past offenses were property crimes or alcohol/drug offenses and are thus closely related to the crimes in the instant case, in which he forged checks to

obtain money for drugs. Moreover, many of Wright's past crimes were felonies. Therefore, the trial court did not abuse its discretion in considering Wright's criminal history to be a significant aggravator.

Wright also alleges that the trial court erred in citing his "prior opportunities for rehabilitation" as an aggravating factor. Wright interprets this aggravator as a reference to his failure to obtain treatment for his drug and alcohol addictions. In our view, the trial court was referring to his many convictions, which included several terms of imprisonment and probation over the years. Each of these prior sentences presented Wright with an opportunity to reevaluate his behavior and change his direction in life. His repeated failures to do so were an appropriate aggravator here. In sum, we find no abuse of discretion in the trial court's finding and balancing of aggravators and mitigators.

## ***II. Inappropriateness of Sentence***

Wright also asks us to consider reducing his sentence pursuant to Indiana Appellate Rule 7(B), which states: "The Court may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." We note that Wright's criminal history is lengthy, despite his young age of twenty-two at the time of the instant offenses. Moreover, he was on probation in two different cases when he committed these forgeries. His drug and alcohol addictions have often fueled his criminal behavior, as they did here. According to the presentence investigation report, Wright has regularly used illegal drugs since the age of twelve, and his first alcohol-related offense occurred in June 2002, when he was nineteen years old. It appears, however, that he has

never seriously addressed these problems. For all these reasons, we cannot conclude that the trial court's imposition of a twelve-year sentence is inappropriate in light of the nature of Wright's offenses and his character.

Affirmed.

BAKER, C. J., and FRIEDLANDER, J., concur.